

City of Biddeford

Shellfish Conservation Ordinance

Sec. 74-101. Authority.

This division is enacted in accordance with 12 M.R.S.A. § 6671.
(Ord. No. 2000.20, § 1, 4-4-00; Ord. No. 2002.33, 4-2-02)

Sec. 74-102. Purpose.

To establish a shellfish conservation program for the City of Biddeford that will insure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means that may include:

- (a) Licensing.
- (b) Limiting the number of shellfish harvesters.
- (c) Restricting the time and area where digging is permitted.
- (d) Limiting the minimum size of clams taken.
- (e) Limiting the amount of clams taken daily by a harvester.

(Ord. No. 2000.20, § 2, 4-4-00; Ord. No. 2002.33, 4-2-02)

Sec. 74-103. Shellfish Conservation Committee.

The Shellfish Conservation Program for the City of Biddeford will be administered by the Shellfish Conservation Committee consisting of seven members to be appointed by the mayor and confirmed by the council for terms of three years.

The Committee's responsibilities include:

- (a) Establishing annually in conjunction with the department of marine resources the number of shellfish digging licenses to be issued.
- (b) Reviewing annually the status of the resource using the results of clam flat, harvester or dealer surveys and other sources of information and preparing in conjunction with and subject to the approval of the department a plan for implementing conservation measures.
- (c) Submitting to the city council proposals for the expenditures of funds for the purpose of shellfish conservation.
- (d) Keeping this division under review and making recommendations for its amendments.
- (e) Securing and maintaining records of shellfish harvest from the city's managed shellfish areas and closed areas that are conditionally opened by the department of marine resources.
- (f) Recommending conservation closures and openings to the city council in conjunction with the area biologists of the department of marine resources.
- (g) Submitting an annual report to the municipality and the department of marine resources covering the above topics and all other committee activities.

(Ord. No. 2000.20, § 3, 4-4-00; Ord. No. 2002.33, 4-2-2002)

Sec. 74-104. Definitions.

- (a) *Resident*. The term "resident" refers to a person who has been domiciled in this municipality for at least three months next prior to the time his claim of such residence is made. Proof of residency shall be by one of the following criteria:

1. A person who pays real estate property taxes to the city or can provide a rent receipt within the jurisdiction of the city;
2. A person who is a registered voter in the city;
3. A person who can provide a vehicle registered both in the city and the State of Maine;
4. A person who can provide a valid motor vehicle license showing an address within the jurisdiction of the city;
5. A person who can provide a valid school ID showing an address within the jurisdiction of the city. Proof of eligibility will be the burden of the applicant.

(b) *Nonresident*. The term "nonresident" means anyone not qualified as a resident under this division.

(c) *Shellfish, clams and intertidal shellfish resources*. When used in the context of this division the words "shellfish," "clams," and "intertidal shellfish resources" mean soft shell clams (*Mya arenaria*).

(d) *Municipality*. Refers to the City of Biddeford, Maine.

(e) *Guest*. Any person invited to assist a recreational license holder in harvesting a combined total that does not exceed one peck of shellfish per license per any one day. (Ord. No. 2000.20, § 4, 4-4-00; Ord. No. 2002.33, 4-2-02)

Sec. 74-105. Licensing.

It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current license issued by this municipality as provided by this division. A commercial digger must also have a valid State of Maine Commercial Shellfish License issued by the department of marine resources.

(a) *Designation, scope and qualifications*:

1. *Resident commercial shellfish license*. The license is available to residents of the municipality and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.

2. *Nonresident commercial shellfish license*. The license is available to nonresidents of this municipality and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.

3. *Residential recreational shellfish license*. The license is available to residents and real estate taxpayers of this municipality and entitles the holder and guest(s) to dig and take no more than one peck of shellfish per any one day from the shores and flats of this municipality.

4. *Nonresident recreational shellfish license*. The license is available to any person not a resident of this municipality and entitles the holder and guest(s) to dig and take not more than one peck of shellfish per any one day from the shores and flats of this municipality.

5. *License must be signed*. The licensee must sign the license to make it valid.

(b) *Application procedure*. Any person may apply to the clerk for the licenses required by this division on forms provided by the municipality.

1. *Contents of application*. The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature and whatever information the municipality may require.

2. *Misrepresentation*. Any person who gives false information on a license application will cause said license to become invalid and void.

(c) *Fees.* The fees for the licenses are as stated below and must accompany in full the application for the respective license. The clerk shall pay all fees received to the treasurer except for \$3.00 of each license that will be retained by the clerk as payment for issuing the license. Shellfish license fees and fines shall be used by the municipality for shellfish management, conservation and enforcement.

Resident commercial: \$200.00.

Nonresident commercial: \$400.00.

Resident recreational: \$30.00.

Resident recreational 65--70 years old: \$10.00.

Nonresident recreational: \$60.00.

Nonresident recreational 65--70 years old: \$20.00.

(d) *Limitation of diggers.* Clam resources vary in density and size distribution from year to year and over the limited soft clam producing area of the municipality. It is essential that the municipality carefully husband its shellfish resources. If, following the annual review of the municipality's clam resources, its size distribution, abundance and the warden's reports, as required by section 74-103, the shellfish conservation committee in consultation with the DMR area biologist determine limiting commercial or recreational shellfish licenses is an appropriate shellfish management option for the following year:

1. Prior to April 1, the committee shall reports its findings and document recommendations for the allocation of commercial and recreational licenses to be made available for the following license-year to the commissioner of marine resources for concurrence.

2. After receiving approval of proposed license allocations from the commissioner of marine resources and prior to May 1, the shellfish conservation committee shall notify the clerk in writing of the number and allocation of shellfish licenses to be issued.

3. Notice of the number of licenses to be issued and the procedure for application shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation, which the municipal officers consider effective in reaching persons affected, not less than ten days prior to the period of issuance and shall be posted in the municipal offices until the period concludes.

4. The clerk shall issue licenses to residents and nonresidents as allocated from June 1 and until August 31 after which licenses shall be issued to residents and nonresidents on a first-come, first-served basis.

5. Licenses may be returned to the municipality voluntarily, and reissued to another person at the current fee according to the priorities established in this section. Any license returned is nonrefundable.

6. Member of the shellfish conservation committee shall be entitled to apply for a recreational shellfish license 30 days in advance of general license sales.

(e) *Open license sales.* When the shellfish conservation committee determines limiting shellfish licenses is not an appropriate shellfish management option for one or more license categories for the following year:

1. Notice of the dates, places, times and the procedures for the license sales shall be published in a trade or industry publication, or in a newspaper or combination of

newspapers with general circulation, which the municipal officers consider effective in reaching persons affected, not less than ten days prior to the initial sale date and shall be posted in the municipal offices. A copy of the notice shall be provided to commissioner of marine resources.

2. For each commercial license category, the clerk shall issue one license to nonresidents when six licenses are issued to residents and one more to nonresidents when four more are issued to residents; thereafter, one nonresident license will be issued for every ten additional resident license issued. For each recreational license category, the clerk shall issue one license to a resident and one to a nonresident; thereafter, one nonresident license will be issued for every ten additional resident license issued.

(f) *License expiration date.* Each license issued under authority of this article expires at midnight on last day of May next following date of issuance.

(g) *Fee waivers.* Recreational shellfish license fees will be waived for license holders 70 years or older. Individuals 12 years or younger do not need a license to assist a recreational shellfish license holder in harvesting not more than one peck of shellfish in total per any one day.

(h) *Suspension.* Any shellfish licensee having three convictions for a violation of this division shall have his shellfish license automatically suspended for a period of 30 days.

1. A licensee whose shellfish license has been suspended pursuant to this division may reapply for a license only after the suspension period has expired.

2. The suspension shall be effective from the date of mailing of a notice of suspension by the clerk to the licensee.

3. Any licensee whose shellfish license has automatically been suspended pursuant to this section shall be entitled to a hearing before the shellfish conservation committee upon the filing of a written request for hearing with the clerk within 30 days following the effective date of suspension. The licensee may appeal the decision of the shellfish conservation committee before the council by filing a written request for appeal with the clerk within seven days of the decision of the shellfish conservation committee.

(i) *Shellfish harvesting log.* Commercial shellfish license holders are supplied with, and required to keep, a shellfish harvesting log which must be submitted to the shellfish conservation committee secretary no later than the fifteenth of the following month. The log will include the date, location and number of bushels harvested during each day.

(j) *Conservation benefit.* Biddeford commercial shellfish license holders who have purchased their licenses during the period of issuance for the previous license year and who have completed 12 hours of conservation work under the supervision of the shellfish conservation committee and submitted the monthly harvesting log shall be permitted to purchase a shellfish license for \$200.00 during the first two days preceding the regular sale date. The shellfish conservation committee will pre-approve all accepted conservation projects by a majority vote. These records will be kept by the secretary. In the event all commercial license holders complete their conservation obligation and it is deemed that licenses must be reduced for the following year, licenses will be issued by seniority. Seniority is defined as number of years a license has been held. If a tie in seniority occurs, the city clerk will conduct a lottery to break the tie.

(Ord. No. 2000.20, § 5, 4-4-00; Ord. No. 2002.33, 4-2-02; Ord. No. 2004.8, 3-2-04)

Sec. 74-106. Opening and closing of flats.

The municipal officials, upon the approval of the commissioner of marine resources, may open and close areas for shellfish harvest. Upon recommendations of the shellfish conservation committee and concurrence of the department of marine resources area biologist that the status of

shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the municipal officials may call a public hearing, and shall send a copy of the notice to the department of marine resources. The decision of the municipal officials made after the hearing shall be based on findings of fact.

(Ord. No. 2000.20, § 6, 4-4-00; Ord. No. 2002.33, 4-2-02)

Sec. 74-107. Minimum legal size of soft shell clams.

It is unlawful for any person to possess soft shell clams within the municipality which are less than two inches in the longest diameter except as provided by subsection (b) of this section.

(a) *Definitions:*

1. *Lot.* The word "*lot*" as used in this division means the total number of soft shell clams in any bulk pile. Where soft shell clams are in a box, barrel, or other container, the contents of each box, barrel, or other container constitutes a separate lot.

2. *Possess.* For the purpose of this section, "*possess*" means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell clam shell stock.

(b) *Tolerance.* Any person may possess soft shell clams that are less than two inches if they comprise less than ten percent of any lot. The tolerance shall be determined by count of not less than one peck nor more than four pecks taken at random from various parts of the lot or by a count of the entire lot if it contains less than one peck.

(c) *Penalty.* Whoever violates any provision of this section shall be punished as provided by 12 M.R.S.A. § 6681.

(Ord. No. 2000.20, § 7, 4-4-00; Ord. No. 2002.33, 4-2-02)

Sec. 74-108. Penalty.

A person who violates this division shall be punished as provided by 12 M.R.S.A. § 6671(10).

(Ord. No. 2000.20, § 8, 4-4-00; Ord. No. 2002.33, 4-2-02)

Sec. 74-109. Effective date.

This division, which has been approved by the commissioner of marine resources, shall become effective after its adoption by the municipality provided a certified copy of the ordinance from which this division is derived is filed with the commissioner within 20 days of its adoption.

(Ord. No. 2000.20, § 9, 4-4-00; Ord. No. 2002.33, 4-2-02)

Sec. 74-110. Period of ordinance.

This article shall remain in effect until eliminated or amended.

(Ord. No. 2000.20, § 10, 4-4-00; Ord. No. 2002.33, 4-2-02)

Sec. 74-111. Separability.

If any section, subsection, sentence or part of this division is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this division.

(Ord. No. 2000.20, § 11, 4-4-00; Ord. No. 2002.33, 4-2-02)

Sec. 74-112. Repeal.

Any ordinance regulating the harvesting or conservation of shellfish in the municipality and any provisions of any other municipal ordinance that is inconsistent with this division is hereby repealed.

(Ord. No. 2000.20, § 12, 4-4-00; Ord. No. 2002.33, 4-2-02)